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December 18, 2002

James D. Schultz  
Vice President, Environment  
and Energy

Charlotte R. Mooney  
Ingrid Rosencrantz  
Generator and Recycling Branch (5301W)  
U.S. Environmental Protection Agency, Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Re: Request for Consideration of Unique SPL Recycling Issues  
In Proposing Specific Revisions to the Definition of Solid Waste

Dear Ms. Mooney and Ms. Rosencrantz:

At the suggestion of Matt Straus, the member companies of the American Iron and Steel Institute ("AISI")<sup>1</sup> hereby provide you with specific information regarding the regulatory obstacles currently impeding and discouraging efforts to reuse and/or recycle spent pickle liquor from pickling of steel (also referred to as "spent hydrochloric acid" or as U.S. Environmental Protection Agency ("EPA") Hazardous Waste No. K062). We are aware that EPA is currently working on a proposed regulation that will change the current definition of solid waste by providing a general exclusion from the definition of solid waste for recycling practices within the same generating industry. However, AISI is concerned that the contemplated North American Industry Classification System ("NAICS")-based proposal currently under development by EPA will not alleviate the current obstacles to reusing and/or recycling K062. Accordingly, this letter serves to provide EPA with additional modifications to the definition of solid waste that, if promulgated by EPA, will remove the obstacles currently impeding and discouraging K062 recycling efforts.

As background information, in the mid 1990s, AISI member company representatives actively participated in the Iron and Steel Subcommittee of EPA's Common Sense Initiative ("CSI"). One of the Subcommittee's tasks was to identify: (1) the different management options employed for K062; and (2) potential options for increasing the amounts of K062 reused and/or recycled. This task culminated in the dissemination of an EPA memorandum entitled "White Paper Regarding RCRA Regulation of Spent Pickle Liquor" dated July 17, 1998 from Robert Perciasepe and

<sup>1</sup> There are currently thirty-five (35) AISI member companies representing sixty-seven (67) percent of total U.S. raw steel production.

David Ullrich, Co-Chairs of the Iron and Steel CSI Subcommittee, to the Iron and Steel CSI Subcommittee Members. A copy of this white paper is enclosed (see Enclosure 1).

As a follow up to the CSI, AISI member company representatives met with Matt Straus to discuss the possibility of obtaining consistent Federal regulatory relief for K062 recycling practices. Specifically, AISI member companies advocated the creation of a specific exclusion:

- (1) At 40 C.F.R. § 261.2(e) from the definition of "solid waste" for spent hydrochloric acid from steel production when the spent hydrochloric acid is processed to recover hydrochloric acid and/or iron oxide; or
- (2) From the definition of "solid waste" by adding another subsection to 40 C.F.R. § 261.4(a) for spent hydrochloric acid used for pickling in the steel industry similar to the existing exclusion for spent sulfuric acid at 40 C.F.R. § 261.4(a)(7).

Mr. Straus informed AISI that EPA is currently focusing on revisions to the definition of solid waste and that the proposed revisions may address AISI's K062 recycling issues. However, as Mr. Straus explained the proposed changes to the definition of solid waste, it became apparent to AISI member companies that the proposed changes would provide limited relief to only a few facilities.

Specifically, it is our understanding that EPA is contemplating a change to the definition of solid waste whereby hazardous waste would be excluded from regulation under the Resource Conservation and Recovery Act ("RCRA") provided such waste is reused and/or recycled "within the same generating industry". Furthermore, it is our understanding that the definition of what constitutes "within the same generating industry" would be based upon the NAICS codes. It is unlikely that such a change will provide regulatory relief for the reuse and/or recycling of K062. For instance, the NAICS for iron and steel operations generating K062 begins with the first three digits "331" for Primary Metal Manufacturing. In contrast, the NAICS for operations recycling K062 for the production of hydrochloric acid (as well as iron oxide) begins with the first three digits "325" for Chemical Manufacturing. All of AISI member companies' hydrochloric acid pickling operations, including K062 generation activities, fall under this "331" NAICS code. The EPA proposal is too narrow if it requires that the first two (much less, three or four) digits of the NAICS codes be identical in order to afford relief under the proposed definition of solid waste. Such criterion will provide no relief to K062 reuse and recycling efforts.

The following examples describe AISI member companies' K062 recycling arrangements:

- (1) Some AISI member companies lease property at their facility to a third party. The third party accepts the K062 generated onsite and also accepts K062

generated offsite. In most cases, the third party's recycling operations are not economical if limited to only receiving the K062 generated by the on-site metal manufacturer.

- (2) Some AISI member companies transport their K062 to an off-site chemical manufacturer that leases property for their operations from a metal manufacturer.
- (3) Some AISI member companies transport their K062 to an off-site chemical manufacturer that owns the land and the facility and receives all of the K062 reused and/or recycled by it from off-site metal manufacturers.
- (4) Some AISI member companies have their own on-site K062 reuse and/or recycling operations that are captive operations; they do not receive K062 from off-site metal manufacturers.

Under EPA's contemplated continuous industrial process "within the same generating industry" exclusion, all four (4) reuse/recycling operations are virtually identical with respect to the raw material they reuse and/or recycle (i.e., K062), the operations employed, and the product they produce (i.e., hydrochloric acid (as well as iron oxide)). However, only the facilities identified within item (4) above would be afforded RCRA regulatory relief. AISI believes this makes absolutely no sense.

AISI member companies believe that hydrochloric acid regeneration/ iron oxide production facilities are continuous industrial processes within the same generating industry despite the fact that the facilities may not have the same NAICS code. Furthermore, EPA has acknowledged this practical reality by choosing to regulate both hydrochloric acid pickling and hydrochloric acid regeneration under the same source category within the applicable National Emission Standards for Hazardous Air Pollutants ("NESHAPs") regulations (i.e., 40 C.F.R. Part 63, Subpart CCC).

For all of the reasons emphasized above, AISI believes that it is most appropriate for EPA to rethink its options for proposing revisions to the definition of solid waste. In that vein, AISI recommends that EPA: (1) propose the Metals Industry Recycling Coalition ("MIRC")<sup>2</sup> general criteria for exempting all secondary materials that are "legitimately recycled" from the RCRA regulations; and/or (2) create a specific exclusion for K062. Both of these options are discussed below.

As you know, the MIRC "legitimate recycling" criteria were previously provided to EPA under Collier Shannon & Scott letterhead in November 2002. Under the criteria, AISI member companies' K062 reuse and recycling efforts would be exempt from RCRA regulation because:

<sup>2</sup>

AISI is a member of MIRC.

- (1) The K062 reuse and recycling processes currently employed produce at least one material for use as a feed material or product (i.e., hydrochloric acid is always used as a feed material or product; in addition, iron oxide is sometimes used as a product).
- (2) Prior to reuse and recycling, the K062 meets incoming raw material specifications.
- (3) Prior to reuse and recycling, the K062 is not speculatively accumulated.
- (4) Prior to reuse and recycling, the K062 is not mismanaged. It is stored in aboveground storage tanks prior to placement in the recycling operation.
- (5) Business records are maintained of the amounts of: K062 received at the reuse and recycling operation and processed; hydrochloric acid (and in some cases iron oxide) produced and subsequently used; and, in some cases, iron oxide destined for further disposition.
- (6) The produced hydrochloric acid and iron oxide meet specific product specifications.

AISI requests that EPA incorporate the MIRC "legitimate recycling" criteria within the definition of solid waste proposal.

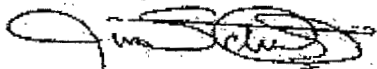
Further, AISI requests that EPA also include either of the following specific exclusions from the definition of "solid waste":

- (1) For spent hydrochloric acid from steel production when the spent hydrochloric acid is processed to recover hydrochloric acid and/or iron oxide by clarifying that the existing exclusions at 40 C.F.R. § 261.2(e) specifically cover K062 recycling; or
- (2) By adding another subsection to 40 C.F.R. § 261.4(a) for spent hydrochloric acid used for pickling in the steel industry similar to the existing exclusion for spent sulfuric acid at 40 C.F.R. § 261.4(a)(7).

Either exclusion would afford AISI member companies a level of relief that is long forthcoming with regard to their K062 reuse and recycling efforts.

AISI appreciates this opportunity to express our member companies' concerns with the contemplated definition of solid waste proposal and is available to meet with you to discuss the importance of these issues to AISI and/or assist EPA with the development of specific regulatory language. If you have any questions or would like to meet with AISI member company representatives, please do not hesitate to contact me at (202) 452-7137 or jschultz@steel.org.

Sincerely yours,



Jim Schultz

Vice President, Environment and Energy

Enclosure

cc: Honorable Marianne Horinko (w/enclosure)  
Matt Strauss (w/enclosure)  
MIRC (w/enclosure)